UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

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) Case No. 04-CV-0031-CVE-SAJ
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OPINION AND ORDER

Now before the Court is Plaintiff's Motion to Reconsider Pursuant to FRCP 59(e) with Opening Brief in Support (Dkt. # 42). Plaintiff asks the Court to amend its Opinion and Order affirming defendants' termination of his long term disability benefits (Dkt. # 40). A Rule 59(e) motion to alter or amend the judgment, sometimes referenced as a motion "to reconsider," is warranted where there is (1) an intervening change in the controlling law, (2) new evidence previously unavailable, or (3) the need to correct clear error or prevent manifest injustice. Servants of the Paraclete v. Does, 204 F.3d 1005, 1012 (10th Cir. 2000) (internal citation and quotation marks omitted); see Adams v. Reliance Standard Life Ins. Co., 225 F.3d 1179 (10th Cir. 2000). "Thus, a motion for reconsideration is appropriate where the court has misapprehended the facts, a party's

[&]quot;The Federal Rules of Civil Procedure do not recognize a 'motion to reconsider.' Instead the rules allow a litigant subject to an adverse judgment to file either a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e) or a motion seeking relief from the judgment pursuant to Fed. R. Civ. P. 60(b)." <u>Van Skiver v. United States</u>, 952 F.2d 1241, 1243 (10th Cir. 1991).

position, or the controlling law. . . . It is not appropriate to revisit issues already addressed or

advance arguments that could have been raised in prior briefing." 204 F.3d at 1012.

In its March 2, 2006 Opinion and Order, the Court concluded that defendants' decision to

terminate plaintiff's disability benefits was not arbitrary and capricious, was reasonable, and was

based on substantial evidence. Plaintiff has submitted nothing in his Rule 59 motion to establish the

impropriety of that determination. Since plaintiff has not presented evidence of newly discovered

law or facts and has failed to establish either clear error or a need to correct manifest injustice, the

Court's March 2, 2006 Opinion and Order stands.

IT IS THEREFORE ORDERED that plaintiff's motion to reconsider (Dkt. #42) is hereby

denied.

DATED this 4th day of April, 2006.

Claire V Ear CLAIRE V. EAGAN, CHIEF JUDGE

UNITED STATES DISTRICT COURT